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No. 91-887

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IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1991

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SAMUEL KRUGLIAK and RICHARD L. PHILLIPS,  
co-Disposition Assets Trustees for The  
Mansfield Tire & Rubber Company, Debtor,  
*Petitioners,*

v.

THE UNITED STATES OF AMERICA,  
*Respondent.*

*Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Sixth Circuit*

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REPLY BRIEF

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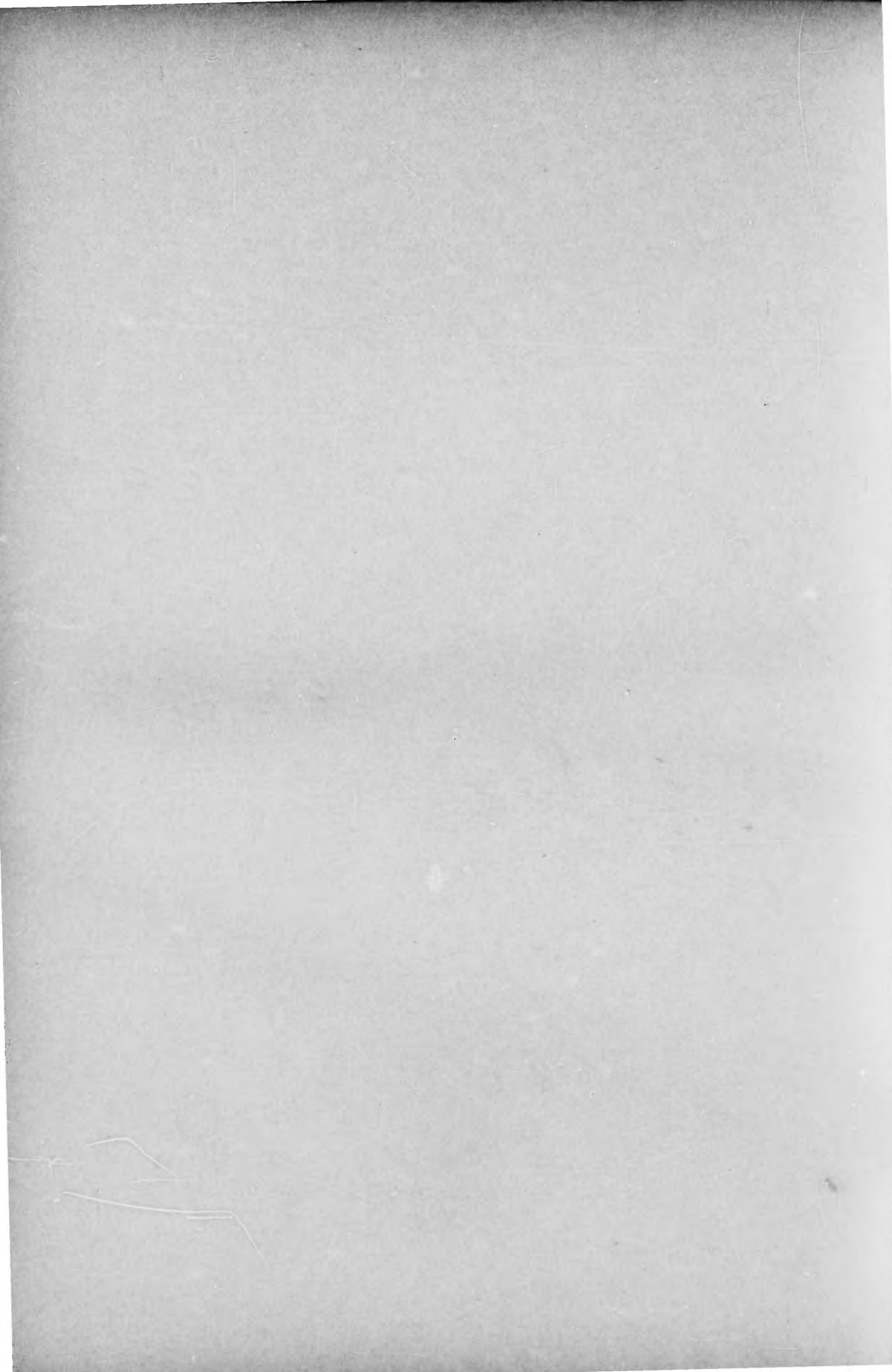
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REPLY BRIEF

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Samuel Krugliak and Richard L. Phillips, co-Disposition Assets Trustees (the "Trustees") for the Mansfield Tire & Rubber Company, Debtor, hereby submit this brief in response to the Brief of the United States in Opposition filed with this Court on or about February 3, 1992 (the "Opposition Brief"). The Trustees will not reiterate facts or arguments from their Petition for Writ of Certiorari (the "Petition") except as necessary to respond to the Opposition Brief.

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\* The disclosure made pursuant to Supreme Court Rule 29.1 in the Petition remains correct.

## ARGUMENT

The Opposition Brief seeks to obscure the fundamental issue of statutory interpretation which the Petition presents for this Court's review. The government erroneously interprets section 507(a)(7)(E) of the Bankruptcy Code and its interplay with section 4971 of the Internal Revenue Code and, as a result, ignores the broader questions presented by the Petition concerning the courts' role in interpreting the Bankruptcy Code and the interrelationship between the Bankruptcy Code and the Internal Revenue Code.

### I.

It is noteworthy that the government does not defend the "plain meaning" statutory analysis used by the Sixth Circuit below, supplying instead an alternative rationale for the lower court's decision. The revised rationale in support of the Sixth Circuit's decision, however, does not cure the substantial interpretational difficulties presented by that case.

The Opposition Brief abandons the sole rationale of the Sixth Circuit, under which the court had relied exclusively on the placement of section 4971 in Subtitle D of the Internal Revenue Code, entitled "Miscellaneous Excise Taxes", in concluding that the exactions of Section 4971 are "excise taxes" within the meaning of section 507(a)(7)(E) of the Bankruptcy Code. The government in the Opposition Brief now asserts that legislative history to section 4971, which the Sixth Circuit never mentioned, justifies the lower court's decision.

The government's refusal to subscribe to the Sixth Circuit's flawed reasoning is further evidence of the

weakness of that court's decision, which was discussed at length in the Petition. This claimed additional support does not, however, remedy the analytical problems inherent in the court's opinion. The fundamental problem with the Sixth Circuit's decision is that it purported to find the "plain meaning" of a provision in the Bankruptcy Code not in the language of the Code itself, but in the structure and labels of a separate federal statute, the Internal Revenue Code.

If the Court were to adopt the government's revised reasoning, the "plain meaning" of the term excise tax in Section 507(a)(7)(E) of the Bankruptcy Code would be found one step further removed from the Bankruptcy Code, by reference to the Internal Revenue Code's legislative history. The revised rationale does not cure the defect in the Sixth Circuit's opinion; indeed, taking the analysis into the legislative history of the tax statutes is less defensible than relying on the language of the Internal Revenue Code itself. Far from supporting the Sixth Circuit's decision, the government's revised rationale again complicates the courts' task of statutory interpretation when provisions of both the Bankruptcy Code and the Internal Revenue Code are at issue, further highlighting the need for review by this Court.

## II.

The technical distinctions that the Opposition Brief uses to deflect the severe methodological inconsistencies between the Sixth Circuit's decision below and both this Court's decision in *United States v. Sotelo*, 436 U.S. 268 (1978), and the Fourth and Fifth Circuits' decisions in *In re Kline*, 403 F. Supp. 974 (D. Md. 1975), *aff'd*, 547 F.2d 823 (4th Cir. 1977), and *In re Unified Control Systems, Inc.*, 586 F.2d 1036 (5th Cir. 1978), belittles the fundamental

inconsistencies among those cases and the far-reaching impact that the Sixth Circuit's decision will have in any attempt to interpret the interplay between the Bankruptcy Code and the Internal Revenue Code. The underlying issue in this case goes to the heart of the interrelationship between the Bankruptcy Code and the Internal Revenue Code, and the process of statutory interpretation when both statutes are at issue.

The government's technical attempt in the Opposition Brief to distinguish the *Sotelo*, *Kline* and *Unified Control* cases completely misses the point that this Petition presents a question which is much broader than the specific facts and statutes considered in each case. In essence, the Opposition Brief uses the same narrow strategy both to downplay the basic inconsistency between the Sixth Circuit's decision and *Sotelo* and to ignore the intercourt conflict, which the Sixth Circuit's decision acknowledged. The government's premise is that no inconsistency can exist because those cases dealt with different statutory language under the former Bankruptcy Act. What this overly technical analysis obscures, however, is that each case directly involves the central, overriding question presented by the Petition -- the proper analytical framework when interpreting statutory terms in the Bankruptcy Code which, in turn, implicate the Internal Revenue Code.

As demonstrated in the Petition, the Sixth Circuit's decision below directly conflicts with the approach to statutory interpretation used by the *Sotelo* Court and by the courts in *Kline* and *Unified Control*. The government's attempts to sidetrack this issue and focus instead on the specific facts of those cases should not be permitted to distract the Court's consideration of the important and far-



reaching matter of statutory interpretation which the Petition presents.

### CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition, the Trustees respectfully request that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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